

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

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JOSEPH CICALA,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 2:24-cv-00821-BNW

**ORDER**

On May 2, 2024, the Court screened Plaintiff's complaint and directed him to file an amended complaint by June 3, 2024. ECF No. 5. The Court warned Plaintiff that failure to do so may result in this action being dismissed. *Id.* Plaintiff has failed to file an amended complaint by the Court's deadline.

The law permits a district court to dismiss an action based on a party's failure to comply with a court order. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint). In determining whether to dismiss an action on this ground, the court must consider: (1) the public's interest in expeditious resolution of litigation, (2) the court's need to manage its docket, (3) the risk of prejudice to the defendants, (4) the public policy favoring disposition of cases on their merits, and (5) the availability of less-drastic alternatives. *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).


The first two factors, the public's interest in expeditiously resolving this litigation and the Court's interest in managing its docket, weigh in favor of dismissal of Plaintiff's claims. The third factor, risk of prejudice to Defendants, also weighs in favor of dismissal because a presumption of injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of cases on their merits— weighs against dismissal.

1 The fifth factor requires the Court to consider whether less-drastic alternatives can be used  
2 to correct the party's failure that brought about the Court's need to consider dismissal. Courts  
3 "need not exhaust every sanction short of dismissal before finally dismissing a case, but must  
4 explore possible and meaningful alternatives." *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th  
5 Cir. 1986). Because this action cannot proceed without Plaintiff's active participation in the case,  
6 the only alternative is to enter another order setting another deadline. The circumstances here do  
7 not indicate that Plaintiff needs additional time. Therefore, setting another deadline is not a  
8 meaningful alternative. So, the fifth factor favors dismissal.

9 In balance, the factors above favor a recommendation of dismissal. *See Hernandez v. City*  
10 *of El Monte*, 138 F.3d 393 (9th Cir. 1998) (holding that dismissal is proper where at least four  
11 factors support dismissal or where at least three factors "strongly" support dismissal).

12 **IT IS THEREFORE ORDERED** that this action is DISMISSED without prejudice for  
13 failure to comply with the Court's Order (ECF No. 5).

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15 DATED: June 14, 2024

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17 BREND A WEKSLER  
18 UNITED STATES MAGISTRATE JUDGE  
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